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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/659,771	09/11/2000	Takao Tabata	00646/LH	4894
7590	08/03/2004		EXAMINER	
Frishauf Holtz Goodman Langer & Chick PC 767 Third Avenue New York, NY 10017-2023			BLECK, CAROLYN M	
			ART UNIT	PAPER NUMBER
			3626	

DATE MAILED: 08/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/659,771	TABATA ET AL.	
	Examiner	Art Unit	
	Carolyn M Bleck	3626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 28 April 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-13 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>28 April 2004</u> .	6) <input type="checkbox"/> Other: _____.

DETAILED ACTION

Notice to Applicant

1. This communication is in response to the amendment filed 28 April 2004. Claims 1-13 are pending. Claims 1-13 have been amended. Claims 14-18 have been cancelled. The IDS statement filed 28 April 2004 has been entered and considered.

Claim Rejections - 35 USC § 112

2. The rejection of claim 3 under 35 USC 112 is hereby withdrawn due to the amendment filed 28 April 2004.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sneeringer (6,618,709) in view of Ogren (4,817,044).

(A) As per claim 1, Sneeringer discloses a system for computer network-based monitoring of resource usage comprising (Abstract; col. 40 lines 57-58):

- (a) a resource metering data recorder for recording resource usage data, including operational characteristics (reads on "usage status data"), measured by a plurality of resource meters (col. 6 lines 12-26, col. 7 lines 10-15, col. 11 line 59 to col. 13 line 21, col. 36 lines 54-58, col. 40 lines 59-65) (reads on "an input section");
- (b) a server for storing the resource usage data of a remotely located resource consuming device in a database (col. 7 lines 15-24, col. 42 lines 22-46) (reads on "a storage section");
- (c) a recorder translator for transferring resource usage data from the data recorder to the database and a server for transmitting resource management information based on resource usage data collected from a meter to a user over a global area network (col. 6 line 7 to col. 7 line 37, col. 36 line 50 to col. 37 line 16) (reads on "a transmission section");
- (d) financial management software having real-time pricing, cost calculations, and cost allocations for the remotely located resource consuming device (col. 6 lines 36-50, col. 31 lines 30-50, col. 36 line 50 to col. 37 line 43) (reads on "a fee system");
- (e) rate analysis software for having rate comparison with variable rate structures and pricing options, wherein the analysis software provides the user with a report displaying the usage data, price, and the rate cost (Fig. 9-11, col. 17 line 5 to col. 18 line 67, col. 31 lines 30-50, col. 36 line 50 to col. 37 line 58, col. 41 line 48 to col. 42 line 16); and

(f) a billing engine for creating bills for payment over the Internet by a customer using the resource consuming device based on billing structures, and the usage data, price, and the rate cost (Fig. 9-11, col. 17 line 5 to col. 18 line 67, col. 31 lines 30-50, col. 32 lines 26-53, col. 36 line 50 to col. 37 line 58, col. 41 line 1 to col. 42 line 16).

Sneeringer fails to expressly disclose the device being a leased medical apparatus.

Ogren discloses a monitoring device for medical appliances that ensures equitable rental billings based on the actual usage of the medical appliance by acquiring usage data from an input electrical means (col. 1 lines 5-15, lines 40-47, and lines 57-69, col. 4 lines 3-25 and lines 60-65, col. 3 lines 35-40, Table at col. 3 and col. 4, col. 7 lines 50-60, col. 8 lines 58-64).

As per the recitation of "lease fees", note Ogren's discussion of rental billings based on the actual usage of the medical appliance (col. 1 lines 5-15, lines 40-47, and lines 57-69).

At the time the invention was made, it would have been obvious to one of ordinary skill in the art to include the device of Ogren within the system taught by Sneeringer with the motivation of easily determining whether equipment is failing or properly functioning, including medical equipment (Sneeringer; col. 18 lines 1-36), more accurately monitoring a medical appliance to determine optimal maintenance, reduce the service costs, and clearly assess the reliability of a particular medical appliance, and also to ensure equitable rental billing based on

the actual usage of the medical appliance (Ogren; col. 1 lines 5-15, lines 40-47, and lines 57-69).

(B) As per claim 2, Sneeringer discloses recording resource usage measured by the resource meter using a resource metering data recorder (col. 6 lines 12-26, col. 7 lines 10-15, col. 11 line 59 to col. 13 line 21, col. 36 lines 54-58, col. 37 lines 58-67, col. 40 lines 59-65).

The remainder of claim 2 repeats the same limitations as claim 1, and is therefore rejected for the same reasons given for claim 1, and incorporated herein.

(C) As per claim 3, Sneeringer discloses reporting operational characteristics that are monitored by a user, such as energy input, and alerts the customer whether the equipment is failing or is functioning properly (col. 18 lines 1-36). Further, Sneeringer discloses rate analysis software for having rate comparison with variable rate structures and pricing options, wherein the analysis software provides the user with a report displaying the usage data, price, and the rate cost (Fig. 9-11, col. 17 line 5 to col. 18 line 67, col. 31 lines 30-50, col. 36 line 50 to col. 37 line 58, col. 41 line 48 to col. 42 line 16).

(D) As per claim 4, Sneeringer discloses allowing a user to input a user ID and password to identify a specific user and log on to the system and allowing the

user to access usage data and change user passwords (col. 14 lines 23-36, col. 29 lines 29-57).

(E) As per claim 5, Sneeringer discloses a software for calculating rates and pricing depending on energy usage; MCF of gas (reads on "number of outputs"); bandwidth, telephone usage, cellular device usage (reads on "amount of time") (col. 36 line 50 to col. 37 line 58). Sneeringer fails to expressly disclose "the number of outputs".

(F) As per claim 6, Sneeringer discloses reporting operational characteristics that are monitored by a user, such as energy input, and alerts the customer whether the equipment is failing or is functioning properly (col. 18 lines 1-36).

However, Sneeringer and Ogren fail to recite prohibiting an increase in the fees when a medical apparatus is used to check its operation or functioning. It is respectfully submitted that a system would typically not increase the fees for using the system while performing an activity such as checking its operation.

The skilled artisan would have included this within Sneeringer and Ogren's system with the motivation of ensuring a user is charged an accurate fee for only the time the system is used.

(G) Claim 7 repeats the same limitations as claims 1-3, and is therefore rejected for the same reasons given for those claims, and incorporated herein.

(H) Method claims 8-13 repeat the subject matter of system claims 1-7, respectively, as a series of steps rather than as a set of apparatus elements. As the underlying elements of claims 1-7 have been shown to be fully disclosed by the collective teachings of Sneeringer and Ogren in the above rejections of claims 1-7, it is readily apparent that the method disclosed by Sneeringer and Ogren includes the steps performed by the aforementioned apparatus. As such, these limitations are rejected for the same reasons given above for system claims 1-7, and incorporated herein.

Response to Arguments

5. Applicant's arguments with respect to claims 1-13 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory

Art Unit: 3626

action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn Bleck whose telephone number is (703) 305-3981. The Examiner can normally be reached on Monday-Thursday, 8:00am – 5:30pm, and from 8:30am – 5:00pm on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas can be reached at (703) 305-9588.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Receptionist whose telephone number is (703) 306-1113.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR

system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

8. Any response to this action should be mailed to:

Commissioner of Patents and Trademarks
Washington, D.C. 20231

Or faxed to:

(703) 872-9306 or (703) 872-9326 [Official communications]

(703) 872-9327 [After Final communications labeled "Box AF"]

(703) 746-8374 [Informal/ Draft communications, labeled
"PROPOSED" or "DRAFT"]

Hand-delivered responses should be brought to Crystal Park 5, 2451 Crystal Drive, Arlington, VA, 7th Floor (Receptionist).

CB
CB
July 28, 2004


JOSEPH THOMAS
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